

September 14, 2010

Chairman Dan Schnur and Members  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

RE: Posting of Pending Investigations

Dear Chairman Schnur and Members,

In response to Monday's letter of opposition from the California Political Attorneys Association objecting to Commission's new practice of posting notices of investigation on the Commission's website, the board of directors of Californians Aware, as well as, I suspect, most of our members, wish to assure you of our support for the practice, which we regard as overdue.

Every alarm raised in the CPAA letter goes simply to the issue of deterrence.

No one seriously suggests that the time for it to be disclosed that a political candidate is under investigation for a possible violation of what amounts to political integrity law is after he or she has been elected. On the other hand, no one contends that the simple fact that one is being investigated is a meaningful disclosure prior to the election; such a bare kernel of information does indeed serve the uses of smear specialists rather than meaningful public awareness.

As is often the case, the best preventive of misinformation or distortion is more rather than less information. Disclosing not just that a person is under investigation but what he or she is accused of—and by whom—allows the public to consider the charges and the source and to know that one way or another the Commission will pursue the matter to either confirmation or exoneration.

This state of affairs is a vast improvement—at least in the eyes of those favoring open government and informed political participation—over the policies which for such a long time left those reporting violations to drop their complaints into the FPPC well and, as with a grand jury, wait in vain for months to hear the splash.

We are under no illusions as to the ethical self-restraint of those in electoral politics who believe that to do good you first have to win, by whatever means, and that the end of doing good justifies the means employed to win. We are familiar with the LBJ story about the sheriff's race and the strategic awkwardness of having to deny even the most outrageous rumor. We recognize that some may be tempted to exploit the proposed disclosure policy to their own advantage by filing bogus complaints or causing others to do so.


But again, these realities simply go to deterrence. By rough analogy, consider that anyone can accuse anyone else of any crime and, unless there are obvious facts rendering the accusation incredible on its face, it may well result in an arrest on suspicion, which can reach the headlines of the next news cycle. The only deterrent to the abuse of this reality by

mischief-makers bent on assaulting an innocent person's reputation is the Penal Code, which makes it a crime knowingly and falsely to make a criminal complaint against another to a law enforcement agency. We suspect that few if any will want to be the first to test your pledge, Chairman Schnur, to take strong political or even legal steps against those who make deliberately false complaints. Those who dare to step over that line can be made an example *pour encourager les autres*, a result that among other things is likely to exile them permanently from further consideration as a plausible candidate for the electorate's trust.

In sum, we believe that the answer is not to cloak the fact or the direction of law enforcement inquiry from the public in some misconceived homage to the presumption of innocence; we don't do that for individuals accused of crime, who stand to lose far more than an election. The answer is to share with the public, in time to be taken into consideration in deciding how to vote, the fact that the Commission is pursuing complaints of violation of the Political Reform Act, the persons accused, the nature of the accusations and the identities of the accusers.

Any judgment that the voters cannot use the totality of this information fairly seems to us a failure of faith in the public at large, ignoring the fact that it was that public, not the professional political class, that insisted on making fair political practices a matter of enforceable law in the first place.

Sincerely,



Terry Francke  
General Counsel